

HOUSING

Update

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This is a test!

By Florence Brassier and Lauren Walker

Testing in the housing market probably began when African Americans felt that they were being denied housing due to their race or color and asked a Caucasian friend to inquire about the housing and report the outcome. Even today individuals who come forward with complaints of housing discrimination will sometimes have used this time-honored technique. Today, of course, testing is a recognized investigative technique used by fair housing agencies and housing providers all over the country to gather information about housing practices in the marketplace.

The transition from "amateur" testing to the formalized investigative technique began as early as the 1970's in some parts of the country. In the 1982 *Havens Realty Corp. v. Coleman* case the Supreme Court described testers as "individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful . . . practices." Over time, this type of investigation has become a central part of the evidence in numerous fair housing cases, ranging from individual acts of discrimination to large "pattern or practice" cases brought by the U. S. Department of Justice. While housing providers sometimes express concerns about the appropriateness or fairness of testing, in 1983 the Seventh Circuit accurately summarized the benefits of this practice for all those who are involved in the housing transaction:

[T]he evidence provided by testers is frequently valuable, if not indispensable . . . [W]e have long recognized that this requirement of deception was a relatively small price to pay to defeat racial discrimination. The evidence provided by testers both benefits unbiased landlords by quickly dispelling false claims of discrimination and is a major resource in society's continuing struggle to eliminate the subtle but deadly poison of racial discrimination. (Richardson v. Howard, 712 F. 2d 319, 321 –7th Cir. 1083)

Over time testing techniques have been developed to investigate a wide variety of potential discriminatory practices against many protected classes in every aspect of housing from the rental market to lending and insurance.

In Washington State there are currently two private nonprofit fair housing organizations which routinely engage in statewide fair housing testing – the Fair Housing Center of South Puget Sound (the Center) in Tacoma and the Northwest Fair Housing Alliance (NWFHA) in Spokane. Where the public agencies have had individual testing programs in the past, they currently contract with the private agencies for complaint and audit testing. Both of the private agencies constantly recruit and train volunteer testers from all of the protected classes covered by the fair housing laws in order to ensure that a diverse pool is available to conduct these investigations. All testers complete a training program which includes practice testing and

thorough evaluation of their performance prior to their being assigned to carry out testing assignments. When a test is assigned, the tester is simply directed to go to the property in question, seek information about the housing and write up a detailed factual report about this experience. This report is then provided to the Test Coordinator for review. The Test Coordinator will then examine the reports for evidence of differences in treatment.

Most often, a test will show that both testers were treated substantially the same – i.e. – offered the same information about availability, shown the same units, quoted the same prices, etc. Sometimes, however, clear differences will be identified such as denial of availability to one tester while another is offered units, differences in prices quoted, or steering of one tester to a different neighborhood or complex. Occasionally other types of evidence will emerge such as an agent's careful courtesy to a protected class tester followed by that same agent's confiding to the control tester that "we don't allow those people to rent here because they cause problems." In every test, the key is the objective factual reporting of the testers who are carefully trained to simply inquire about the housing and report on their experience.

In Washington, testing is used in a variety of ways to ensure that equal housing opportunity is available to all. Sometimes a

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test is initiated in response to an individual complaint brought to one of the public or private fair housing agencies. These investigations help fair housing staff determine whether an illegal discriminatory practice occurred or if there was some other underlying cause for the complaint. Often testing evidence is used to help consumers understand that they were not in fact victims of housing discrimination but that there was another reason for the outcome of the original transaction. Less frequently the test confirms the complainant's suspicions and becomes part of the evidence to support an administrative complaint or a lawsuit.

Testing is not always prompted by complaints, however. Audit testing is also used to help government agencies and communities get an accurate picture of the housing practices in a particular area or neighborhood. This information is often used in community planning documents like the required Analysis of Impediments to Fair Housing Choice or presented to city councils for their review. Some examples of past audits include:

Spokane Familial Status Audit

In 1996 the Northwest Fair Housing Alliance noted many indicators that housing discrimination against families with children was a problem in Spokane. When a rental listing agency listed a number of properties as "no children," NWFHA, in conjunction with Spokane Legal Services and the U.S. Department of Justice, tested several of the listed properties and discovered that they were, in fact, illegally discriminating against families with children. Cases based on this testing evidence ended these practices, ensured that these housing providers received fair housing training and instituted self-testing contracts in which the companies were periodically tested and then provided the results of this testing so that they could evaluate their own compliance and address any

problems identified in the testing. This type of self-testing program is sometimes used within large companies to check out their own fair housing performance.

Eastern/Central Washington National Origin Audits

Under a two-year U.S. Department of Housing and Urban Development Fair Housing Initiatives Program grant, the Northwest Fair Housing Alliance conducted a series of national origin tests in Eastern and Central Washington between March 1, 2001 and February 28, 2003.

Forty-eight of these paired tests were sales tests, 33 of which were conducted in the Columbia Basin region and 15 in other parts of Eastern Washington. Thirty-six of these tests were based on Hispanic national origin and 12 examined the treatment of Middle Easterners. Six per cent of the tests showed overt differential treatment, 25% revealed some evidence of differential treatment, 44% showed equal treatment and the remaining 25% were inconclusive for a variety of reasons. Discriminatory practices encountered in these tests included refusal to deal with the protected class tester or denial of availability of the property to the protected class tester.

During this same period 108 paired rental tests were also conducted for the same protected classes. Once again, 6% of the tests showed clear differential treatment, 23% showed some evidence of differential treatment, 46% showed equal treatment and 25% were inconclusive. Discriminatory practices encountered in these tests included denial of availability and offers of different terms and conditions of rental (higher rents or deposits, for example) to protected class testers.

National Origin Testing in Whatcom/Skagit County

The Fair Housing Center of South Puget Sound conducted paired rental testing in the Skagit and Whatcom counties to test for discrimination based upon national origin. This project took place in 2001 and 2002, during which time 36 matched pair tests were completed. Funding was provided by the U.S. Department of Housing and Urban Development. 27 of the properties were located within Bellingham's city limits.

Results of the national origin testing showed that 41% of the properties tested had evidence of differences in treatment between white and national origin testers. Concurrently, 59% of the tested properties showed equal treatment of home seekers. 27% of the Chinese tests were positive.

58% of the Hispanic tests showed positive results. The positive tests in Bellingham were in five properties represented by four property management companies. Two of the apartment complexes, represented by one management company, had six of the eleven positive tests (four Hispanic and two Chinese tests). Three of the apartment complexes had the remaining five positive tests.

The primary difference in treatment between Hispanic or Chinese (protected class tester) and white testers (control tester) was in the number of apartments shown. In these tests, the white tester was often shown numerous units while the protected class tester was told that there was either no availability or shown one apartment and not told of other availabilities. An additional area of differences was that the protected class and control tester were told of different availability dates. In these situations the control testers were given availability dates that were much earlier than that told to the protected class tester. In several tests the white testers were shown apartments and the Hispanic or Asian tester was apprised that there were no available units and sent to another apartment complex.

Seattle Race Audit Testing

Between 1999 and 2001, the Fair Housing Center of South Puget Sound, under contract with the Seattle Office for Civil Rights, completed 45 rental tests to ascertain the incidence of discriminatory housing practices impacting African Americans. Overall, 19 out of 45 race-based tests (42.22%) revealed potential discrimination, 22 revealed no differences (48.89%) and 4 out of 45 (8.89%) were considered inconclusive. A total of 15 (33.33%) out of 45 race tests were re-tests at sites that initially yielded either positive or inconclusive results. Of the 15 race re-tests, 10 revealed further disparities.

The most common differences encountered between the protected tester and control tester involved differential price and availability information. Positive test results involved agents providing less information about availability or higher prices to Black testers than White testers. One important finding is that several tests revealed situations where a black tester was asked for identification while their white counterpart was not asked for identification. Because consistency in business practices is central

to fair housing, identification disparities at the beginning of a rental transaction may indicate on going throughout tenancy.

A common issue throughout the 1999 testing was the lack of a visible fair housing poster. HUD rules at 24 CFR 110.10 require "all persons subject to section 804 of the (Fair Housing) Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster." Testers saw Fair Housing posters in only four of the 30 tests, or 13% of apartment complexes. While it is possible that many of the complexes actually have a poster in the apartment complex office, the fair housing poster is most effective when it is posted in a visible location.

Seattle National Origin Audit Testing

Between early 2002 and May of 2003, the Fair Housing Center of South Puget Sound, under contract with the Seattle Office for Civil Rights, completed 105 national origin rental tests. The 105 national origin tests included 69 Hispanic tests, 19 Cambodian tests and 17 Middle Eastern tests.

National origin testing had the highest rate of positive test results. Cambodian national origin testing revealed the highest rate of positive tests, at 63.16%, followed by Hispanic national origin testing at 56.52%, Middle Eastern national origin at 52.94%.

When sites were re-tested following initial indications of differential treatment, it was more likely than not that a second test would reinforce the results of the first test. Unlike other protected classes tested by the FHC, 100% of Cambodian and Middle Eastern re-tests indicated continuing discrimination. The high rate of positive re-tests indicates consistent differential treatment. Given the historically recent immigration of these two groups and the high rate of positive test results, it appears that recent immigrants are more likely to encounter housing discrimination.

While the majority of positive Hispanic and Cambodian testing resulted from differences in price and/or availability, most positive Middle Eastern tests involved only differences in availability. The high frequency of differential availability for Middle Eastern testers indicates a reluctance to consider Middle Eastern applicants. While differential price information may indicate different terms and conditions for

prospective tenants, differential availability information may indicate a refusal to initiate a rental transaction altogether.

National Origin Testing In King County

The King County Office of Civil Rights contracted with the Fair Housing Center of South Puget Sound to conduct a national origin rental audit in unincorporated King County. This audit looked at differences in treatment based upon national origin, specifically based upon being Hispanic or Cambodian.

Between November 2002 and May 2003, the Fair Housing Center of South Puget Sound conducted tests on 27 randomly selected apartment complexes in unincorporated King County for the King County Office of Civil Rights. Paired testers were used to test for potential national origin discrimination; the pairs were Hispanic/Caucasian and Cambodian/Caucasian.

In 19 of the 27 apartment complexes, test results revealed possible national origin discrimination and/or impermissible occupancy standards. Eight properties treated all testers similarly. KCOCR sent letters to all housing providers notifying them of the testing and general results. We asked those with questionable tests to meet to discuss the results in detail. All responded to the letter and attended meetings with KCOCR staff during April and May 2003. Where possible, the meetings were conducted as fair housing training

workshops for housing management staff; fair housing training was provided for 51 individuals.

Due to repeated indications of national origin discrimination, one housing provider was tested three times. At the request of the property owner, an extended fair housing training was conducted for the staff of that complex.

National Origin Testing in Thurston County

The Fair Housing Center of South Puget Sound conducted a 30 site rental testing audit for the Washington State Human Rights Commission. This audit focused entirely on difference in treatment toward Hispanic home seekers. 19 tests were in Olympia, 8 tests in Lacey and two in Centralia.

40% of the tests showed differences in treatment toward Hispanic testers. Differences included different rental amounts and fewer unit availabilities. Despite the national origin focus of the testing, fully half of all sites with national origin issues also had familial status issues.

The varied outcomes of these audits demonstrate the value of continued testing to provide current and accurate data about housing transactions in Washington. This information can help both the industry and fair housing advocates design their educational activities to reduce discriminatory practices and maintain an open housing market throughout the State.

Save the date!

The 8th annual

Seattle Human Rights Day



Photo by Rex Rystedt

**Keynote Speaker
Sherman Alexie**

Wednesday, December 10, 2003

Noon - 1:30 p.m.

Arctic Building

700 Third Avenue, 3rd Floor

Free and open to the public

Light refreshments!

For more information call 206-684-4540 or visit www.seattle.gov/civilrights/events.htm

Presented by the Seattle Office for Civil Rights and the Seattle Human Rights Commission



City of Seattle, Greg Nichols, Mayor

Upcoming Events

October 22 & 23, 2003 Crime Free Housing Program

City of Tacoma

Central Wastewater Treatment Facility

Transmission Conference Room

2201 Portland Avenue

Tacoma, Wa 98421

8 a.m. - 5 p.m.

For additional information contact Mary
Beth Riggs at 253-591-5160

October, 29 2003

Fair Housing Training

Provided by HUD, WSHRC, SOCR, and
KCOCR

Jackson Federal Building

South Auditorium, 4th Floor

915 Second Avenue, Seattle, WA

9 a.m. - Noon

For additional information contact Bailey
delongh at 206-296-7592

How to reach us

Fair Housing Center of South Puget Sound

253-274-9523 / 1-888-766-8800

TTY 253-274-9523

King County Office of Civil Rights

206-296-7592, TTY 206-296-7596

Website: www.metrokc.gov/dias/ocre

Northwest Fair Housing Alliance

509-325-2665 / 1-800-200-FAIR

Seattle Office for Civil Rights

206-684-4500, TTY 206-684-4503

Website: www.cityofseattle.net/civilrights

Tacoma Human Rights and Human Services Dept.

253-591-5151, TTY 253-591-5153

Website: www.cityoftacoma.org/HRHS

U.S. Dept. of Housing & Urban Development

206-220-5170, TTY 206-220-5185

Website: www.hud.gov/offices/ftheo

Washington State

Human Rights Commission

360-753-6770 / 1-800-233-3247

TTY 1-800-300-7525

Website: www.wa.gov/hrc

About this publication

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City of Tacoma

Human Rights and Human Services Department

747 Market Street, Room 836

Tacoma, WA 98402-3779

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Testing requires an unbiased
approach and relies on
volunteers not associated with
the housing industry.

